IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

Bail Appl..No. 7274 of 2007()

CRIME NO.686 OF 2007 OF MUNAMBAM POLICE STATION

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: PETITIONER/ACCUSED NO.3

DHANESH, AGED 35 YEARS,
S/O VALSARAJAN, KALATHIPARAMBIL HOUSE,
MURUKUMPADAM, AZHEEKKAL P.O., KOCHI-10.

BY ADV. SRI.P.M.ZIRAJ

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.
REP. BY THE SUB INSPECTOR OF POLICE,
MUNAMBAM POLICE STATION.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.7274 of 2007

Dated this the 7th day of December, 2007

ORDER

Application for anticipatory bail. Petitioner is the 3rd accused. He faces allegations along with co-accused in a crime registered under Section 379 I.P.C. Altogether there are 6 accused persons. The soul of the allegations against the accused is that in furtherance of the common intention of all of them, accused 1 to 3 actually removed clandestinely about 150 ice racks which were left in the harbour. Accused 1 to 3 allegedly took part in the actual operation. They thieved the ice racks and removed the same in a vehicle driven by the 3rd accused. Later these ice racks were allegedly kept surreptitiously in the premises of the accused and in the vehicle of the 5th accused they were removed. Investigation is in progress. Some of the accused have already been arrested. The petitioner has not been arrested so far. Accused 2 and 5 had come before this Court seeking anticipatory bail and by order dated 15.11.07 in B.A.Nos.6915 and 6929 of 2007, the applications of those petitioners were

dismissed. The petitioner is also identically placed like the other accused. I have adverted to facts in detail in the said order. This order must be read in continuation of that order. I am not hence adverting to facts in any greater detail.

2. The learned Public Prosecutor opposes the application and I am satisfied in the facts and circumstances of this case that there is absolutely no merit in the prayer for anticipatory bail by the petitioner. I find no features available in this case which can persuade me to invoke the extraordinary equitable discretion under Section 438 Cr.P.C. The learned counsel for the petitioner submits that the petitioner is the driver of a vehicle and by no stretch of imagination, can it be held that the petitioner had contumacious intention while transporting the articles which were loaded into his vehicle by others. I have gone through the case diary. The case diary clearly shows the culpable involvement of accused 1 to 3 including the petitioner herein - the driver of the vehicle. It is unnecessary to advert in detail to the specific contumacious role. Suffice it to say that I have gone through the case diary, which reveals that the vehicle was parked

clandestinely near the harbour and the accused were there. The vehicle was later taken in the night to the harbour after all the others left and the illicit removal of the ice racks took place.

3. I find merit in the opposition by the learned Public Prosecutor. This, I am satisfied, is a fit case where the petitioner must appear before the learned Magistrate having jurisdiction or the Investigating Officer and then seek bail in the regular and ordinary course.

4. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-